

***Remarks***

Reconsideration of this Application is respectfully requested.

Claims 27, 36, 39, 44-46, 70, 72, 92-95 and 103-105 are pending in the application, with claims 27, 39 and 44 being the independent claims.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

***I. Claim Rejections Under 35 U.S.C. § 102***

Claims 27, 36, 39, 92-95 and 103-105 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 2,835,586 ("Peebles") and WO 95/00031 ("Getler"), as evidenced by U.S. Patent No. 6,140,121 ("Ellington"), BBL Manual of Products and Laboratory Procedures ("BBL Manual"), and Fassolitis *et al.*, *Appl. and Env. Microbiol.* 42:200-203 (1981) ("Fassolitis"). See Paper No. 22, page 2. Applicants respectfully traverse this rejection for the reasons set forth in Applicants' Amendment and Reply filed on July 17, 2003, pages 5-9.

At the outset, Applicants note that claims 44-46 are allowable. See Paper No. 22, page 9. Claim 105 depends from claim 44. Therefore, it appears that claim 105 is also allowable and should not have been included in this rejection. Clarification is requested.

Peebles refers to methods for the manufacture of dry powdered skim milk. Getler refers to methods for preparing agglomerated milk products and "milk-like" products. Neither reference describes an agglomerated eukaryotic cell culture medium powder or medium subgroup powder.

The Examiner has interpreted the phrases "agglomerated eukaryotic cell culture medium powder," and "agglomerated eukaryotic cell culture medium subgroup powder," as recited in the present claims, as encompassing the powdered skim milk of Peebles and the powdered milk and milk-like products of Getler. Applicants respectfully disagree with the Examiner's interpretation of these phrases. Dry powdered milk and milk products are not eukaryotic cell culture media powders or media subgroup powders.

As noted in Applicants' previous response, a person of ordinary skill in the art would appreciate that milk and milk products do not contain the appropriate components that would permit the cultivation of eukaryotic cells. Thus, dry powdered milk and milk products cannot properly be regarded as cell culture medium powders or medium subgroup powders. *See Applicants' Amendment and Reply filed on July 17, 2003, pages 6-7.*

The Examiner has relied on Ellington, the BBL Manual and Fassolitis as evidence that the dry powdered milk and milk products of Peebles and Getler fall within the scope of the present claims. According to the Examiner:

Nonetheless, even as amended, and given the broadest breadth of interpretation of the claims, the agglomerated powders taught by Peebles and Getler are still read as "agglomerated eukaryotic cell culture medium powder", "agglomerated eukaryotic cell culture medium supplement powder", and "agglomerated eukaryotic cell culture medium subgroup powder" because the products can be used in the culturing of cells (as evidenced by the teachings of Ellington, BBL Manual of Products and Laboratory Procedures, and Fassolitis) and can be grouped within the scope of the various media subgroupings as described by Applicant on page 6, lines 13-28 and page 7.

Paper No. 22, pages 4-5. Applicants respectfully disagree with these assertions.

Applicants note that the claims rejected under this section, with the exception of claim 105, are directed to agglomerated eukaryotic cell culture medium powders or

agglomerated eukaryotic cell culture medium subgroup powders. Claim 105 is the only claim rejected under this section that is directed to an agglomerated eukaryotic cell culture medium *supplement powder*. As mentioned above, claim 105 depends from allowable claim 44 and therefore should also be allowable. Thus, the question as to whether the compositions of Peebles and Getler are properly considered medium *supplement* powders is not relevant to the novelty analysis of claims 27, 36, 39, 92-95 and 103-104.

Neither Ellington, the BBL Manual nor Fassolitis provide support for the contention that the dry powdered milk and milk products of Peebles and Getler are properly regarded as agglomerated eukaryotic cell culture medium powders or agglomerated eukaryotic cell culture medium subgroup powders. The Examiner asserted that Ellington, the BBL Manual and Fassolitis provide evidence that milk products "can be *used in* the culturing of cells." See Paper No. 22, page 4. The specification makes it clear that a property possessed by the claimed eukaryotic cell culture medium powders and medium subgroup powders is the ability, when reconstituted, to culture eukaryotic cells. *See Applicants' Amendment and Reply* filed on July 17, 2003, pages 6-7. A composition that is merely an *ingredient* that might be used in a culture medium is therefore not a eukaryotic cell culture medium powder or a medium subgroup powder.

As noted in Applicants' previous response, Ellington does not indicate that eukaryotic cells can be cultivated in milk or milk products. Ellington simply lists "skim milk" as one of several possible *additional components* that can be included in a culture medium. *See Ellington at column 5, lines 29-49.* Ellington does not indicate or suggest that skim milk can support the cultivation or growth of eukaryotic cells, nor does Ellington demonstrate the cultivation of a eukaryotic cell in skim milk. Thus, Ellington does not

support the assertion that dry powdered skim milk (or any dry powdered milk product) is a eukaryotic cell culture medium powder or medium subgroup powder. *See* Paper No. 22, page 8. In the present Office Action, the Examiner has not addressed Applicants' comments regarding Ellington.

With respect to the BBL Manual, the Examiner noted that this document refers to the use of dehydrated skim milk powder for use in cultivating *bacteria*. *See* Paper No. 22, page 6. Claims 27, 36, 39, 92-95 and 103-104, however, are directed to agglomerated *eukaryotic* cell culture medium powders and medium subgroup powders. Bacteria are not eukaryotic cells. Therefore, the BBL Manual does not support the assertion that milk powders are properly regarded as agglomerated eukaryotic cell culture medium powders or agglomerated eukaryotic cell culture medium subgroup powders.

Fassolitis relates to the ability of milk products to substitute for serum in cell culture media. Fassolitis uses nonfat dry milk filtrate as one of many *ingredients* in a cell culture medium. Fassolitis does not indicate or suggest that reconstituted nonfat dry milk filtrate can support the cultivation or growth of eukaryotic cells, nor does Fassolitis demonstrate the cultivation of a eukaryotic cell in reconstituted nonfat dry milk filtrate. Thus, Fassolitis does not support the assertion that dry powdered milk products are eukaryotic cell culture medium powders or medium subgroup powders.

The Examiner characterized the nonfat dry milk filtrate used in Fassolitis as "an eukaryotic cell culture medium supplement." *See* Paper No. 22, page 6. As noted above, claims 27, 36, 39, 92-95 and 103-104 are directed to agglomerated eukaryotic cell culture medium powders and medium subgroup powders, not to eukaryotic cell culture medium supplements. Thus, the question as to whether nonfat dry milk filtrate is a eukaryotic cell

culture medium supplement is irrelevant to the novelty analysis of claims 27, 36, 39, 92-95 and 103-104. The only claim included in this rejection that is directed to an agglomerated eukaryotic cell culture medium *supplement* powder is claim 105. Claim 105, however, depends from claim 44, which was not included in this rejection. If claim 44 is not anticipated by the cited references, then claim 105 necessarily cannot be anticipated by the cited references either.

Neither Peebles nor Getler teach or suggest an agglomerated eukaryotic cell culture medium powder or medium subgroup powder. Thus, Peebles and Getler cannot and do not anticipate the present claims. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 102 be reconsidered and withdrawn.

**IV. *Claim Rejections Under 35 U.S.C. § 103***

Claims 27, 36, 39, 70, 72, 92-95 and 103-105 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Peebles and Getler in view of U.S. Patent No. 5,474,931 ("DiSorbo"). *See* Paper No. 22, page 8. Applicants respectfully traverse this rejection for the reasons set forth in Applicants' Amendment and Reply filed on July 17, 2003, pages 9-11.

Applicants again note that claims 44-46 are allowable. *See* Paper No. 22, page 9. Claim 105 depends from claim 44. Therefore, it appears that claim 105 is also allowable and should not have been included in this rejection. Clarification is requested.

The obviousness rejection is based on the Examiner's position that Peebles and Getler teach agglomerated eukaryotic cell culture medium powders or medium subgroup powders. *See* Paper No. 22, page 9. As noted above, neither Peebles nor Getler teach or

suggest an agglomerated eukaryotic cell culture medium powder or medium subgroup powder. Likewise, DiSorbo does not teach or suggest an agglomerated eukaryotic cell culture medium powder or medium subgroup powder. A *prima facie* case of obviousness cannot be established unless all of the claim elements are taught or suggested by the cited references. *See In re Royka*, 490 F.2d 981, 984-85 (CCPA 1974); *see also In re Glaug*, 283 F.3d 1335, 1341-42 (Fed. Cir. 2002); *In re Rijckaert*, 9 F.3d 1531, 1533 (Fed. Cir. 1993). Since none of the cited references teach or suggest an agglomerated eukaryotic cell culture medium powder or medium subgroup powder, a *prima facie* case of obviousness cannot be established.

In addition, a *prima facie* case of obviousness requires that the Examiner demonstrate a suggestion or motivation to combine or modify the cited references. *See In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). There is nothing to suggest modifying or combining Peebles, Getler and/or DiSorbo. Thus, a *prima facie* case of obviousness cannot be established. *See Applicants' Amendment and Reply* filed on July 17, 2003, pages 10-11.

Since not all of the elements of the claims are taught or suggested by the cited references, and since a person of ordinary skill in the art would not have been motivated to combine or modify the references, a *prima facie* case of obviousness has not been established. Applicants therefore respectfully request that the rejection under 35 U.S.C. § 103 be reconsidered and withdrawn.

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

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